

MUSICK, PEELER & GARRETT LLP  
ATTORNEYS AT LAW

JACK W. FLEMING  
j.fleming@mpglaw.com  
(714) 668-2421

650 TOWN CENTER DRIVE, SUITE 1200  
COSTA MESA, CALIFORNIA 92626-1925

FACSIMILE: (714) 668-2490  
WWW.MUSICKPEELER.COM

LOS ANGELES  
ORANGE COUNTY  
SAN DIEGO  
SAN FRANCISCO  
SANTA BARBARA  
WESTLAKE VILLAGE

FILE No. 13299.001

January 20, 2009

Honorable Susan Illston  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
Courtroom 10, 19<sup>th</sup> Floor  
450 Golden Gate Avenue  
San Francisco, CA 94102

A telephone conference has been scheduled to occur on Wed,  
January 21, 2009, at 4:30 p.m. Mr Fleming shall initiate the  
conference call and get the Court's phone number by contacting  
clerk.

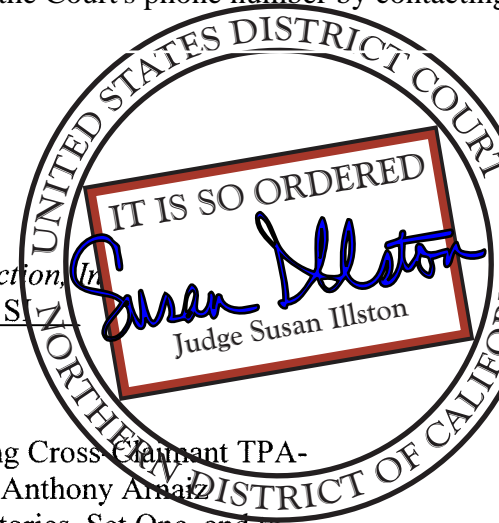
Re: *ECCO Equipment Corporation v. Central Valley Construction, Inc.*  
US District Court, Northern District Case No: C 07 1568 S

Dear Judge Illston:

On November 26, 2008, the Court issued an Order granting Cross-Defendant TPA-CKY Joint Venture's ("TPA-CKY") motion to compel Cross-Defendant Anthony Arnaiz ("Arnaiz") to provide further responses to TPA-CKY's Special Interrogatories, Set One, and to produce additional documents in response to TPA-CKY's Request for Production of Documents Set Two. A copy of the Court's Order is attached hereto for the Court's convenience. The Order requires further responses and the production of additional documents, with "prompt compliance" mandated to enable the parties to prepare for a scheduled January 30, 2009 mediation. The Order specifically states that "Further delay will not be tolerated."

As of this date, TPA-CKY has heard nothing from Arnaiz's counsel concerning the further interrogatory responses and documents which the Court ordered to be produced. Arnaiz's counsel has produced no additional documents, and has failed to supplement his interrogatory responses. Furthermore, we have received no communication from Arnaiz's counsel regarding the reason for Arnaiz's failure to comply with the Court's Order in a timely manner. The mediation is currently scheduled to take place on January 30, 2009, and TPA-CKY has been deprived of the discovery responses which it needs to properly prepare for the mediation.

Accordingly, TPA-CKY requests that the Court schedule a telephone conference call, and order that Arnaiz show cause why he should not be sanctioned, pursuant to Federal Rules of Civil Procedure, Rule 37(b)(2)(A), for failure to obey the Court's discovery order, with



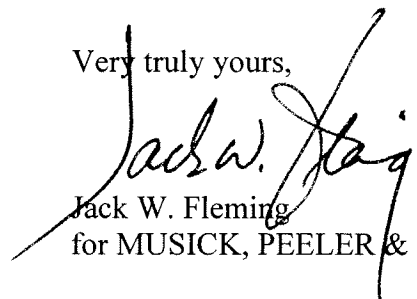
MUSICK, PEELER & GARRETT LLP  
ATTORNEYS AT LAW

Hon. Susan Illston  
January 20, 2009  
Page 2

such sanctions including issue, evidence, and monetary sanctions and penalties for contempt pursuant to Rule 37(b)(2)(A)(vii).

Time is of the essence in light of the upcoming mediation, and Arnaiz's failure to make any effort whatsoever to comply with the Court's Order. TPA-CKY, therefore, respectfully requests that a telephonic conference hearing be scheduled as soon as possible to address this issue.

Very truly yours,



Jack W. Fleming  
for MUSICK, PEELER & GARRETT LLP

JWF:ke

cc: TPA-CKY Joint Venture  
Michael F. Babitzke, Esq. for Anthony Arnaiz

623261.1